IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.50 OF 2006

Ankush Baburao Gangane & ors. ..Applicants.

V/s.

State of Maharashtra & Ors. ..Respondents.

Mr.Surel S. Shah for applicant.

Mr.R.S.Khadapkar, AGP for respondent Nos.1 to 3.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 12, 2006.

P.C. :

1. Heard counsel for the parties.

2. Rule. Counsel for the Respondents waives service.

3. Rule made returnable forthwith by consent. As short question is involved, revision is taken up for final disposal by consent.

4. This revision takes exception to the order passed by SLAO dated 20th December, 2005. By the said order SLAO rejected the application preferred by the applicants for making reference to the court under section 18 of the Land Acquisition Act, 1894 for enhancement of compensation essentially on three

grounds. The first ground stated is that the application was barred by provisions of the Act. Secondly, the applicants did not accept the compensation amount under protest. Thirdly, the applicants have not filed any claim before the SLAO during the enquiry under section 9(3) and (4) of the Act. This order is subject matter of the challenge in the present revision.

5. After hearing counsel for the parties, I have no hesitation in allowing the revision application. This is so because, the applicants have justly relied on the decision of our High Court in the case of **Tanaji Abaso Pawar & ors. v/s. State of Maharashtra & Anr. reported in 2005(2) All MR page 76**, which has taken the view that the SLAO can reject request to make reference under section 18 only on limited ground. So far as ground Nos.2 and 3 stated in the order impugned in this revision are concerned, the same are not available for rejection of application under section 18 of the Act. The only ground available to the SLAO referred to in the impugned order is the ground regarding application barred by limitation. In so far as this ground is concerned, the same cannot be sustained either on fact or in law. This is so because it is common ground that the

applicants did not participate in the proceedings before the SLAO. In other words, the applicants were not present before SLAO when the award was pronounced. In that case the provision regarding limitation to file application under section 18 will commence from the date of receipt of notice under section 12(2) of the Act. The record indicates that such notice was served on applicants on 9th May, 2005. As limitation would commence from that date and the application under section 18 having been filed on 20th June, 2005, the same was filed within limitation. Accordingly, the first ground stated in the impugned order cannot be countenanced. The same will have to be set aside.

6. In so far as other two grounds mentioned in the impugned order as is mentioned earlier were not available to the SLAO for rejecting the application under section 18. Counsel for the respondents however, contends that ground No.2 stated in the order that the applicants were not eligible for pursuing remedy under section 18 having accepted the compensation amount without recording protest will have to be upheld. In the first place, that is not the ground available to the SLAO to reject the application. Even if, such ground is to be invoked,

the same has now been well established by the decision of our High Court in the case of **Tanaji Abaso Pawar (supra).** This Court has taken the view that wide meaning will have to be given to the word "Protest" as given in the second proviso to subsection 2 of section 31 of the Act. It means that it can be lodged in different forms either by specifically recording such protest at the time of acceptance of money or even by lodging an application for enhancement of compensation under section 18 or even orally intimating the authorities that he is not satisfied with the compensation awarded at the time of disbursement of the amount by the Collector under section 31(1) of the said Act. Counsel for the respondents however, contends that such view expounded in the reported case referred to above will require reconsideration. This is so because the second proviso in section 31(2) will be redundant. It is not possible to accept this submission. I am in agreement with the argument of the applicants that the respondents will have to show that the applicants were made aware about their right to record protest while accepting the amount of compensation; and if they were to waive such right, only then would be disentitled to take recourse to remedy under section 18 of the Act. Reliance is placed on the decision of

our High Court in **State of Maharashtra V/s. Shridhar s/o Ramchandra Mokasdar** reported **in 2005(1) all MR page 51** to support this legal position.

7. Suffice it to observe that the other two grounds pressed into service in the order which is impugned before me were not available to the SLAO for rejecting the application under section 18 of the Act. Instead the SLAO was obliged to process the application preferred by the applicants in the fact situation of the present case and make reference to the court under section 18 of the act to be proceeded in accordance with the law. Accordingly, these revision application succeeds. The impugned order is set aside. Instead the SLAO is directed to process further application preferred by the applicants.

8. The revision application disposed of on the above terms.